

201909958  
Timothy Burke

On July 29, 2019, two teenagers were driving a motorized scooter when they were pulled over for traffic infractions by several officers, including Officer Timothy Burke, who were patrolling the area in an unmarked vehicle. The officers took the two teenagers to the ground, spoke discourteously to them, and used offensive language towards them before arresting them. Back at the stationhouse, Officer Burke and another officer continued to speak to the teenagers discourteously and used offensive language towards them. After one of the teenagers refused to take off his own shoes, Officer Burke leaned down to forcibly remove the shoes himself. The teenager pushed Burke away with his left hand and then PO Burke slapped him on the right side of his face with the shoe. The teenager was slapped again but it was unclear from the video evidence which officer delivered the slap. Thirty seconds later, Officer Burke and another officer pushed the teenager against the bench and used force to restrain his hands behind his back.

During his subsequent CCRB interview, Officer Burke stated that the teenager refused to take off his shoes voluntarily, so he had to remove the shoes for him. Officer Burke claimed that the teenager tried to shove him away which caused him to lose his balance backwards. It was only upon losing his balance, he claimed, that he reached out in front of him to catch his balance and his hand which was still holding the shoe accidentally made contact with the teenager's face. Upon being shown another officer's body worn camera footage which clearly showed him hitting the teenager in the face with the shoe, Officer Burke amended his statement to state that he struck the teenager in the face with the shoe as a reflex reaction to being shoved.

The CCRB substantiated allegations that PO Burke used excessive force and provided investigators with a misleading official statement. The NYPD reports the case as pending but PO Burke has left the department.

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 201909958	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Mon, 07/29/2019 1:45 AM, Mon, 07/29/2019 2:00 AM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 01/29/2021	EO SOL 9/15/2021	
Date/Time CV Reported Thu, 11/07/2019 1:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/15/2019 9:10 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Timothy Burke	17244	§ 87(2)(b)	052 PCT
3. POM Edgar Rivera	05576	§ 87(2)(b)	052 PCT
4. POM James Lindquist	06307	§ 87(2)(b)	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Thomas Mullarkey	05409	§ 87(2)(b)	052 PCT
2. SGT Craig Basler	00544	§ 87(2)(b)	052 PCT
3. SSA Vincenzo Spinola	04384	§ 87(2)(b)	052 PCT
4. POM Juan Rivera	02341	§ 87(2)(b)	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Edgar Rivera	Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in The Bronx, Police Officer Edgar Rivera stopped the vehicle in which § 87(2)(b) were occupants.	A . § 87(2)(g)
B . POM Timothy Burke	Abuse of Authority: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke stopped the vehicle in which § 87(2)(b) were occupants.	B . § 87(2)(g)
C . POM James Lindquist	Abuse of Authority: At § 87(2)(b) in The Bronx, Police Officer James Lindquist stopped the vehicle in which § 87(2)(b) were occupants.	C . § 87(2)(g)
D . POM Edgar Rivera	Force: At § 87(2)(b) in The Bronx, Police Officer Edgar Rivera used physical force against § 87(2)(b).	D . § 87(2)(g)
E . POM Timothy Burke	Force: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke used physical force against § 87(2)(b).	E . § 87(2)(g)
F . POM James Lindquist	Force: At § 87(2)(b) in The Bronx, Police Officer James Lindquist used physical force against § 87(2)(b).	F . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
G . POM Timothy Burke	Discourtesy: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)	G . § 87(2)(g)
H . POM Timothy Burke	Discourtesy: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)	H . § 87(2)(g)
I . POM Edgar Rivera	Off. Language: At East § 87(2)(b) in The Bronx, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	I . § 87(2)(g)
J . POM James Lindquist	Discourtesy: At § 87(2)(b) in The Bronx, Police Officer James Lindquist spoke discourteously to § 87(2)(b)	J . § 87(2)(g)
K . POM Edgar Rivera	Off. Language: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	K . § 87(2)(g)
L . POM Edgar Rivera	Off. Language: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	L . § 87(2)(g)
M . POM Timothy Burke	Discourtesy: At the 52nd Precinct stationhouse, Police Officer Timothy Burke spoke discourteously to Ehab Hezam.	M . § 87(2)(g)
N . POM Timothy Burke	Discourtesy: At the 52nd Precinct stationhouse, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)	N . § 87(2)(g)
O . POM Timothy Burke	Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke hit § 87(2)(b) against a wall.	O . § 87(2)(g)
P . POM Timothy Burke	Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke struck § 87(2)(b) with a shoe.	P . § 87(2)(g)
Q . POM Timothy Burke	Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke used physical force against § 87(2)(b)	Q . § 87(2)(g)
R . POM Edgar Rivera	Force: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera used physical force against § 87(2)(b)	R . § 87(2)(g)
S . An officer	Abuse of Authority: At the 52nd Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.	S . § 87(2)(g)
T . POM Timothy Burke	Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Timothy Burke threatened § 87(2)(b) with the use of force.	T . § 87(2)(g)
U . POM Timothy Burke	Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Timothy Burke damaged § 87(2)(b) property.	U . § 87(2)(g)
V . POM Edgar Rivera	Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera refused to provide his shield number to § 87(2)(b)	V . § 87(2)(g)
§ 87(4-b), § 87(2)(g)		
Z . POM Timothy Burke	Untruthful Statement: Police Officer Timothy Burke provided a misleading official statement to the CCRB.	Z . § 87(2)(g)

### Case Summary

On November 7, 2019, § 87(2)(b) of the NYPD Legal Bureau called IAB and reported use of force against § 87(2)(b) and § 87(2)(b) both the age of 16 at the time of this incident. On November 15, 2019 the CCRB received this complaint, via IAB Log # 2019-40877.

On July 29, 2019, at 1:45 AM, § 87(2)(b) and § 87(2)(b) were driving a motorized scooter and were pulled over by Police Officer Edgar Rivera, Police Officer Timothy Burke, and Police Officer James Lindquist, all of the 52nd precinct, at § 87(2)(b) in Brooklyn (**Allegations A - C – Abuse of Authority – § 87(2)(g)**). PO Rivera, PO Burke, and PO Lindquist took § 87(2)(b) and § 87(2)(b) to the ground (**Allegations D - F – Force – § 87(2)(g)**). PO Rivera, PO Burke, and PO Lindquist spoke discourteously to and used offensive language towards § 87(2)(b) and § 87(2)(b) (**Allegations G - J – Discourtesy/Offensive Language – § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were arrested and transported to the 52<sup>nd</sup> Precinct stationhouse.

At the 52<sup>nd</sup> Precinct stationhouse § 87(2)(b) and § 87(2)(b) were brought into the § 87(2)(b) room. PO Rivera and PO Burke spoke discourteously to and used offensive language towards § 87(2)(b) and § 87(2)(b) (**Allegations K - N – Discourtesy/Offensive Language – § 87(2)(b), § 87(2)(g)**). PO Burke allegedly pushed § 87(2)(b)'s head against the wall (**Allegation O – Force – § 87(2)(g)**). PO Burke hit § 87(2)(b) in the face with a shoe (**Allegation P – Force – § 87(2)(g)**). PO Burke and PO Rivera pushed § 87(2)(b) against a bench and used force to restrain him (**Allegations Q and R – Force – § 87(2)(g)**). An officer allegedly pointed their taser at § 87(2)(b) and verbally threatened him with the use of the taser (**Allegation S – Abuse of Authority – § 87(2)(g)**). PO Burke allegedly threatened § 87(2)(b) with a pocketknife (**Allegation T – Abuse of Authority – § 87(2)(g)**). PO Burke allegedly cut the strings off of § 87(2)(b)'s shorts (**Allegation U – Abuse of Authority – § 87(2)(g)**). PO Rivera allegedly refused to provide § 87(2)(b) with his shield number as per his request (**Allegation V – Abuse of Authority – § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) Burke provided a misleading official statement to the CCRB (**Allegation Z – Untruthful Statement – § 87(2)(g)**)

§ 87(2)(b) and § 87(2)(b) were arrested for reckless endangerment as a result of this incident and released to a guardian the following morning without any charges or summonses. § 87(2)(b) was unavailable to provide a statement and the investigation was unable to obtain a records release form from him.

The CCRB received three BWC videos (BR 06-08) of the incident at § 87(2)(b) and § 87(2)(b) and one BWC video (BR 09) of the incident at the 52<sup>nd</sup> Precinct stationhouse which are all partially redacted to conceal § 87(2)(b)'s face.

This case was originally assigned to Investigator Olga Bentin and was reassigned to Investigator Edward Tsigel upon Investigator Bentin's departure from the CCRB.

The IAB investigated allegations of force against PO Burke regarding this incident (BR 24). The IAB substantiated the force allegations against PO Burke and substantiated additional allegations against PO Burke, PO Rivera, and PO Lindquist for discourtesies, failure to properly document this incident, failure to activate their BWCs, and failure to notify supervisors and the IAB regarding the nature of this incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: At § 87(2)(b) in The Bronx, Police Officer Edgar Rivera stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (B) Abuse of Authority: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (C) Abuse of Authority: At § 87(2)(b) in The Bronx, Police Officer James Lindquist stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

The investigation did not obtain a statement from § 87(2)(b) because he was unavailable (BR 01).

On July 29, 2019, at approximately 1:45 AM, § 87(2)(b) (BR 02) and § 87(2)(b) were driving a motorized scooter on § 87(2)(b) in The Bronx at approximately 30 miles per hour when they observed PO Rivera, PO Burke, and PO Lindquist following them in an unmarked black sedan. They turned onto § 87(2)(b) and drove on the sidewalk for approximately one minute. The officers then turned on their lights and sirens and pulled § 87(2)(b) and § 87(2)(b) over at the corner of § 87(2)(b) and § 87(2)(b).

PO Rivera (BR 03), PO Burke (BR 04), and PO Lindquist (BR 05) stated that they observed § 87(2)(b) and § 87(2)(b) operate a motorized scooter and commit multiple traffic infractions, including not having a license plate on the scooter, running a red light, speeding at approximately 25 to 40 miles per hour, driving towards incoming traffic on one-way streets, and driving on the sidewalk. The officers made a joint decision to initiate a vehicle stop by turning on their lights and sirens. § 87(2)(b) and § 87(2)(b) did not stop once the officers initiated the vehicle stop and continued driving on the sidewalk for approximately four to ten blocks. All of the officers stated that initially the purpose of the vehicle stop was to address the traffic infractions, but because § 87(2)(b) and § 87(2)(b) fled from the officers and continued to drive on the sidewalk, they were going to be placed under arrest for reckless endangerment.

BWC footage (BR 06-09) does not capture § 87(2)(b) and § 87(2)(b) driving on the motorized scooter.

**NYS VTL Section 1225-A** (BR 10) states that no person shall drive a motor vehicle on or across a sidewalk except when reasonable and necessary. If it is reasonable and necessary, then the vehicle must be driven at no more than five miles per hour and in such manner as to not interfere with the safety and passage of pedestrians.

**NYC DOT Traffic Rules Section 4-06** (BR 11) states that no person shall drive a vehicle at a speed greater than twenty-five miles per hour except where official signs indicate a different maximum speed limit.

§ 87(2)(g)

**Allegation (D) Force: At § 87(2)(b) in The Bronx, Police Officer Edgar Rivera used physical force against § 87(2)(b)**

**Allegation (E) Force: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke used physical force against § 87(2)(b)**

**Allegation (F) Force: At § 87(2)(b) in The Bronx, Police Officer James Lindquist used physical force against § 87(2)(b)**

§ 87(2)(b) (BR 02) stated that after he was pulled over, PO Rivera, PO Burke, and PO Lindquist approached him and § 87(2)(b). The officers pushed his motorized scooter to the ground, grabbed him by his arm and back, threw him to the ground, and handcuffed him. § 87(2)(b) was also taken to the ground and handcuffed by an officer. § 87(2)(b) and § 87(2)(b) were arrested and transported to the 52<sup>nd</sup> Precinct stationhouse.

PO Rivera (BR 03), PO Burke (BR 04) and PO Lindquist (BR 05), all stated that they approached § 87(2)(b) and § 87(2)(b) grabbed them, guided them to the ground, and handcuffed

them because they were under arrest for reckless endangerment. Neither § 87(2)(b) nor § 87(2)(b) resisted the officers. Due to § 87(2)(b) and § 87(2)(b) fleeing from the officers prior to the vehicle stop, it was necessary for the officers to immediately take them down to prevent the possibility of them fleeing from the officers again.

BWC footage shows that after the officers pull § 87(2)(b) and § 87(2)(b) over, they approach them and immediately take them to the ground. From 00:20 to 00:40 of PO Rivera's BWC (1) (BR 06), PO Rivera is seen grabbing § 87(2)(b) taking him to the ground, and handcuffing him. From 00:15 to 00:35 of PO Burke's BWC (BR 07), PO Burke is seen taking § 87(2)(b) to the ground. From 00:15 to 00:35 of PO Lindquist's BWC (BR 08), PO Lindquist is seen taking § 87(2)(b) to the ground and handcuffing him. Neither § 87(2)(b) nor § 87(2)(b) resist the officers. It is unclear what actions PO Burke, PO Rivera, and PO Lindquist take to bring § 87(2)(b) and § 87(2)(b) to the ground.

**NYPD Patrol Guide Procedure 221-01** (BR 12) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

§ 87(2)(g)

**Allegation (G) Discourtesy: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)**

**Allegation (H) Discourtesy: At § 87(2)(b) in The Bronx, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)**

**Allegation (I) Offensive Language: At § 87(2)(b) in The Bronx, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (J) Discourtesy: At § 87(2)(b) in The Bronx, Police Officer James Lindquist spoke discourteously to § 87(2)(b)**

The above allegations were captured in the BWC videos and were not alleged by § 87(2)(b)

From 0:00 to 10:00 of PO Rivera's BWC (1) (BR 06), § 87(2)(b) and § 87(2)(b) are handcuffed and placed under arrest. Additional officers are requested and arrive at the scene after approximately five minutes. § 87(2)(b) and § 87(2)(b) are placed into a marked police vehicle and transported to the 52<sup>nd</sup> Precinct stationhouse. At 0:33 PO Burke says, "You think you're fucking cool bro." Between 8:35 and 10:16, PO Rivera calls § 87(2)(b) a "Pussy" multiple times, says "Make me your bitch, keep making me your bitch," and tells § 87(2)(b) to "Shut up" multiple times.

At 0:30 of PO Burke's BWC (BR 07), PO Burke whispers "Fucking ass" in the vicinity of § 87(2)(b) and at 1:05, PO Burke calls § 87(2)(b) an "Idiot."

From 2:05 to 3:40 of PO Lindquist's BWC (BR 08), PO Burke and PO Lindquist call § 87(2)(b) a "Goofy ass."

PO Rivera (BR 03), PO Burke (BR 04), and PO Lindquist (BR 05) stated that § 87(2)(b) and § 87(2)(b) made repeated threats towards the officers and told them that they would kill and rape them and their family members. PO Rivera, PO Burke, and PO Lindquist acknowledged making the above statements in the heat of the moment and as a response to the continuous verbal abuse from § 87(2)(b) and § 87(2)(b) during the incident.

**Patrol Guide Procedure 200-02** (BR 13) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

**Patrol Guide Procedure 203-10** (BR 25), states that members of service are prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.

§ 87(2)(g)

**Allegation (K) Offensive Language: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (L) Offensive Language: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (M) Discourtesy: At the 52nd Precinct stationhouse, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)**

**Allegation (N) Discourtesy: At the 52nd Precinct stationhouse, Police Officer Timothy Burke spoke discourteously to § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) were transported to the 52<sup>nd</sup> Precinct stationhouse after their arrest. The above allegations were captured in the BWC video and were not alleged by § 87(2)(b)

From 0:00 to 6:25 of PO Rivera's BWC (2) (BR 09), § 87(2)(b) and § 87(2)(b) are lodged at the front desk of the 52<sup>nd</sup> Precinct stationhouse. At 6:25 they are brought into the juvenile room and are searched before being put into a cell. Between 0:00 and 8:45, PO Rivera calls § 87(2)(b) and § 87(2)(b) a "Pussy" multiple times and uses the word "Fuck" multiple times in statements such as "You ready to fuck me up right?" At 8:45, PO Burke tells § 87(2)(b) to "Shut the fuck up." Between 8:50 and 10:00, PO Rivera and PO Burke repeatedly use the words "Shit," "Fuck," and "Fucking" in statements such as "What the fuck is wrong with you," and "Don't fucking move."

PO Rivera (BR 03) and PO Burke (BR 04) acknowledged making the above statements in the heat of the moment and out of frustration due to the verbal abuse from § 87(2)(b) and § 87(2)(b) throughout the night of the incident.

**Patrol Guide Procedure 200-02** (BR 13) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

**Patrol Guide Procedure 203-10** (BR 25), states that members of service are prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.

§ 87(2)(g)

**Allegation (O) Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke hit § 87(2)(b) against a wall.**

**Allegation (P) Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke struck § 87(2)(b) with a shoe.**

**Allegation (Q) Force: At the 52nd Precinct stationhouse, Police Officer Timothy Burke used physical force against § 87(2)(b)**

**Allegation (R) Force: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera used physical force against § 87(2)(b)**

**Allegation (S) Abuse of Authority: At the 52nd Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.**

**Allegation (T) Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Timothy**



**Burke threatened § 87(2)(b) with the use of force.**

**Allegation (U) Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Timothy Burke damaged § 87(2)(b) s property.**

§ 87(2)(b) (BR 02) stated that once he was brought into the § 87(2)(b) in the stationhouse an officer handcuffed his right hand to the bench in the room. PO Burke requested that he take off his shoes and he told PO Burke that he had trouble taking off his shoes because his right was handcuffed to the bench. PO Burke pushed § 87(2)(b) s head into the wall and took off § 87(2)(b) s shoes for him. An unknown male officer pointed his taser at § 87(2)(b) and said, “Make any move and I will tase you.” PO Burke took out a three-inch pocketknife and put it against § 87(2)(b) s stomach and then proceeded to cut the strings off his shorts. An officer handcuffed § 87(2)(b) s hands and feet together and placed him and § 87(2)(b) in a cell.

PO Rivera (BR 03), PO Burke (BR 04) and PO Lindquist (BR 05) stated that they brought § 87(2)(b) and § 87(2)(b) into the § 87(2)(b). Additional officers were present, but they did not remember who specifically. In the § 87(2)(b) § 87(2)(b) s right hand was handcuffed to the bench and PO Burke asked § 87(2)(b) to take off his shoes. § 87(2)(b) refused to do so, and PO Burke took the shoes off for him. Once PO Burke took off § 87(2)(b) s shoes, § 87(2)(b) pushed PO Burke. PO Burke stated that the push caused him to lose his balance and fall backwards away from § 87(2)(b). PO Burke was carrying § 87(2)(b) s shoes in his hand. To catch his balance, PO Burke reached out in front of him with his hand that held § 87(2)(b) s shoe, and in the process, the shoe made contact with § 87(2)(b) s face. During a follow up interview, PO Burke was shown PO Rivera’s BWC footage (BR 09) from 8:35 to 9:00. PO Burke amended his statement (BR 17) and stated that he struck § 87(2)(b) as a reflexive action due to § 87(2)(b) shoving him.

PO Rivera (BR 03), PO Burke (BR 04) and PO Lindquist (BR 05) all stated that § 87(2)(b) then slapped PO Burke on the right side of his face with his free left hand. PO Rivera and PO Burke pushed § 87(2)(b) down against the bench, uncuffed his right hand from the bench, and handcuffed his hands behind his back. PO Lindquist assisted PO Rivera and PO Burke in handcuffing § 87(2)(b) s hands. PO Rivera witnessed the entire incident. PO Lindquist was present in the § 87(2)(b) room but did not see the force used and only saw it at a later date when he reviewed PO Rivera’s BWC (2) footage (BR 09). Once § 87(2)(b) was handcuffed, him and § 87(2)(b) were placed in a cell and the officers left the § 87(2)(b) room.

PO Rivera (BR 03), PO Burke (BR 04) and PO Lindquist (BR 05) denied pushing § 87(2)(b) s head against the wall or witnessing any other officer do that. They all denied pointing a taser at § 87(2)(b) or seeing any other officer do that. None of the officers saw any officer with their taser out during this incident. All of the officers denied threatening to tase § 87(2)(b) or hearing any other officer do so.

PO Burke stated that he had a pocketknife on him during this incident, but never placed it against § 87(2)(b) s stomach. He did not remember if he took it out but stated that he only ever used it to cut strings off of prisoners’ clothing prior to placing them into cells, as per department procedure. He did not remember if he or any other officer cut the strings off § 87(2)(b) s shorts. PO Rivera and PO Lindquist did not see PO Burke take out a knife or place one against § 87(2)(b) s stomach. PO Rivera and PO Lindquist did not cut the strings off § 87(2)(b) s shorts or see any other officer do that but stated that it would have been procedure to do so if the strings could not be removed otherwise, or if § 87(2)(b) refused to voluntarily remove them.

BWC footage captures one angle of this incident and does not clearly capture all actions taken or statements made by § 87(2)(b) and the officers. From 0:00 to 6:25 of PO Rivera’s BWC (2) (BR 09), § 87(2)(b) and § 87(2)(b) are being lodged at the front desk of the 52<sup>nd</sup> Precinct stationhouse. From 6:25 to 8:30 PO Rivera, PO Burke, and PO Lindquist bring § 87(2)(b) and § 87(2)(b) into the § 87(2)(b) room and handcuff them to a bench in the room. At 8:45, PO Burke asks § 87(2)(b) to take off his shoes and he refuses to do so. PO Burke takes § 87(2)(b) s shoes off for him and § 87(2)(b) pushes PO Burke away with his left hand. PO Burke slaps § 87(2)(b) on the right side of his face with a shoe. PO Rivera and PO Burke approach § 87(2)(b) and tell him to not



touch PO Burke. Immediately after, a slap is heard but it is not seen who slaps who or where they are slapped. PO Rivera and PO Burke were shown the BWC footage at 8:55 and they stated that § 87(2)(b) slapped the right side of PO Burke's face with his left hand during this portion of the incident. Between 9:00 and 10:30, PO Rivera and PO Burke push § 87(2)(b) against the bench and handcuff his hands behind his back. At 11:00 PO Rivera leaves the juvenile room and the footage ends. There are at least seven male officers seen standing immediately outside of the § 87(2)(b) room. The footage shows that neither PO Burke nor any other officer pushed § 87(2)(b)'s head against the wall. The footage does not show any officer ever pointing their taser at § 87(2)(b) or § 87(2)(b) and does not capture any officer saying "Make any move and I will tase you" or any other verbal or physical threat involving the use of a taser. The footage does not capture PO Burke or any other officer ever carrying a pocketknife, placing a knife against § 87(2)(b)'s person, or using a knife to cut any strings on § 87(2)(b)'s clothing.

**NYPD Patrol Guide Procedure 221-01** (BR 12) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers must consider the immediacy of the perceived threat or harm to members of service.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

**Allegation (V) Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Edgar Rivera refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) (BR 02) stated that he was released from the cell the following morning without any charges or summonses. Once he was released, he asked PO Rivera for his shield number and the shield number of the other officers involved in this incident. PO Rivera laughed and said, “Get out of here.” PO Rivera never provided his or any other shield numbers to § 87(2)(b)

PO Rivera (BR 03) did not remember if § 87(2)(b) requested his shield number or any other officers’ shield numbers but believed that he provided it to § 87(2)(b) at some point during the day of the incident. PO Burke (BR 04) and PO Lindquist (BR 05) did not hear § 87(2)(b) ask PO Rivera or any other officers for their shield numbers.

BWC footage (BR 06-09) did not capture § 87(2)(b) asking any officers for their shield numbers.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

**Allegation (Z) Untruthful Statement: Police Officer Timothy Burke provided a misleading**

**official statement to the CCRB.**

During PO Burke's initial narrative (BR 04), he stated that § 87(2)(b) refused to take off his shoes voluntarily, so he leaned to the ground and removed his shoes for him. § 87(2)(b) shoved PO Burke away which caused him to lose his balance backwards. PO Burke reached out in front of him (with his hand that held § 87(2)(b)'s shoe) to catch his balance, and in the process, the shoe made contact with § 87(2)(b)'s face. PO Burke was shown from 8:35 to 9:00 of PO Rivera's BWC 2 (BR 09) in which he is seen hitting § 87(2)(b) in the face with the shoe. PO Burke amended his statement (BR 17) and stated that he struck § 87(2)(b) in the face with the shoe as a reflexive reaction to § 87(2)(b) shoving him away.

**NYPD Patrol Guide Procedure 203-08** (BR 18) states that a misleading statement is a statement that is intended to misdirect the fact finder, and materially alter the narrative by: intentionally omitting a material fact or facts, or altering and/or changing a member's prior statement or account when a member of service is confronted with independent evidence indicating that an event did not occur as initially described. A material fact is a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- Police Officer Edgar Rivera has been a member of service for seven years and has been a subject in nine other CCRB complaints and twenty-five allegations, of which five were substantiated.
  - 201702768 involved a substantiated allegation of a threat of force against PO Rivera. The board recommended formalized training and the NYPD imposed instructions as discipline.
  - 201703447 involved a substantiated allegation of a refusal to provide name and shield number against PO Rivera. The board recommended command level instructions and the NYPD imposed command level instructions as discipline.
  - 201806414 involved a substantiated allegation of a discourtesy against PO Rivera. The board recommended command level instructions and the NYPD imposed command level instructions as discipline.
  - 201909592 involved substantiated allegations of failure to provide RTKA card, and a stop against PO Rivera. The board recommended command discipline A and the NYPD has not yet imposed discipline.
  - PO Rivera's CCRB history does not reflect any apparent pattern pertinent to this investigation.

- Police Officer Timothy Burke has been a member of service for seven years and has been a subject in four other CCRB complaints and nine allegations, of which two were substantiated.
  - 201909592 involved substantiated allegations of failure to provide RTKA card, and a stop against PO Burke. The board recommended command discipline A and the NYPD has not yet imposed discipline. PO Burke's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- Police Officer James Lindquist has been a member of service for seven years and has been a subject in five other CCRB complaints and fourteen allegations, of which one was substantiated.
  - 201703383 involved a substantiated allegation of a question against PO Lindquist. The board recommended command level instructions and the NYPD imposed formalized training as discipline. PO Lindquist's CCRB history does not reflect any apparent pattern pertinent to this investigation.

#### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation.
- § 87(2)(b) s mother § 87(2)(b) filed a notice of claim with the City of New York on behalf of § 87(2)(b). She claimed that § 87(2)(b) was illegally seized, detained, falsely arrested, assaulted, battered, and improperly taken into custody and is seeking \$500,000 as redress (BR 21).
- According to the Office of Court Administration (OCA), § 87(2)(b) (BR 22) and § 87(2)(b) (BR 23) have no history of convictions in New York City.

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Squad No.: 4

Investigator: <u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>6/17/2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>6/22/2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date